
From: Mary Scurlock
To: Bob Rees & Nancy Slavin; Bob Van Dyk; Glen Spain; Paul Engelmeyer; Chuck Willer; Meryl Redisch; Francis Eatherington; Gregory Haller; Noah Greenwald; Lisa Brown; Joseph Vaile; Forrest English; Steve Pedery; nbell@advocates-nwea.org; Rhett Lawrence; Bruce H. Anderson
CC: Jeff Devore
Sent: 3/5/2014 7:54:08 PM
Subject: Report from the Board of Forestry
Attachments: ATT00001.htm; Revised-BOF-Continue PCW Rule -Scurlock + 17 groups.pdf

RESENDING WITH CORRECT ATTACHMENT (sorry, I just suck at word processing)

Dear Riparian Rule Groupies:

Although there were five industry witnesses to our one (yours truly) I would say that overall we had a good day the Board of Forestry today, where an "informational item" on the relationship between the Board/Department of Forestry and the Environmental Quality Commission/DEQ was presented.

HIGHLIGHTS OF THE MARCH 5 MEETING:

Cindy Deacon Williams, fish biologist and Board member, defended our interests very strongly. In two separate mini-speeches Cindy let it be clearly known that her perspective is:

- It is the Board's duty to act in light of strong evidence that the current rules allow stream heating in excess of the Protecting Coldwater Criterion
- She keeps hearing about new science but hasn't seen any that would change the Board's finding that a rule change is needed
- The Board is charged with meeting the standards EQC promulgates, and there is no indication from DEQ that the standard will be changed in the foreseeable future
- Increases of even the average exceedance shown in RipStream of .7 degrees C is biologically significant to fish
- She wants to work with landowners to ensure that we meet the rule in the way that best meets their operational needs, but she is having trouble getting folks to work with her
- Change is hard, but from her perspective the rule process is really not moving all that fast,. If stakeholders are feeling left out of the process she wants to help fix it.

Gene Foster of DEQ and Peter Daugherty of ODF presented information on the cooperative, sometimes difficult and confusing regulatory relationship between the two agencies which in my opinion was generally helpful to the cause of keeping this rule making on track.

- Gene highlighted the strong technical basis for the PCW, including two Technical Advisory Groups and an IMST report, and that the need to prevent stream warming applies both to PCW stream (salmonid bearing streams meeting the numeric criteria) and impaired streams (any stream not meeting the numeric criteria). The 2003 technical advisory committee findings supporting the PCW include: 1) natural thermal regimes provide the best conditions for fish; 2) there is ecological value in a diversity of temperatures, including colder than the numeric criteria; 3) there is a need to prevent downstream accumulation of heat in fish reached. DEQ indicated that while it can't say what the EQC might do, it has no petition to revise the PCW before it -- though any citizen can submit one.
- Daugherty reiterated the RipStream findings and the Board's action on this rule to date, indicating that there are three steps left in the Board's process: to determine the rule's geographic scope, evaluate alternatives and select the rule alternative that will become the proposed rule.

Additionally, you should know that before the meeting I checked in with **Brett Brownscombe of the Governor's office** by phone and their position is that despite industry efforts to change their minds, they are not planning to

support the Board's avoidance of a rule change, and this is consistent with the message they are hearing from DEQ's Pederson and ODF's Peter Daugherty. This is good news. Brett also let me know that responses from non industry scientists to some of the claims being made about new science would not go amiss.

Industry witnesses generally disputed the idea that current forest practice rules harm fish, even if they do violate the Protecting Coldwater Criterion, making the following claims:

Jim James, OSWA: There is no urgency to act, there is new science since the PCW was enacted by DEQ,, "DEQ made a mistake" and the increases in stream temperature are not harmful to fish so it is not worth the \$100 million (or was it \$600m?) even a 1% increase in forest retention would cost small landowners. The PCW is "an antiquated decades old water quality standard that is not based on common sense because there is "no science" suggesting that there are any problems with fish in forested streams.

Ray Jones, Stimson: The rule is moving too fast, slow down and do it right. The rule will have a high impact on landowners -- \$40m on Stimson. The data are not consistent. Claimed paired watershed studies show no impact on fish from logging. Touted Best Available Science.

Chris Jarmer, OFIC. He submitted the regional committee letter that my letter was responding to and urged the Board to use the Regional Committees more because of all the landowner experience on them and successful work with them on other rules (wet weather hauling, chemicals)..

Heath Curtiss, OFIC Lawyer: Argues that Board has broad discretion in deciding how it meets standard set by EQC and should not consider it a "mechanical task." Emphasized federal government's lack of authority to actually enforce non point source violations, that OFPA goes "beyond the Clean Water Act" by creating a state-administered enforceable program. Specifically, Heath emphasized that under ORS 527.765(1)(a) in determining whether a rule is "practicable" the Board of Forestry must "consider" the "beneficial uses of water potentially impacted," stating that "those who assert this inquiry is exclusively reserved to the EQC . . .misread state law." Wants the Board should make an independent determination as to whether the violation of the PCW the Board seeks to remedy impacts beneficial uses (I would argue the impact is a presumption). Stated that the current rules are "not having acute negative impacts" on fish.

Rex Storm, AOL: Current stream rules are effective. The Board's previous finding on PCW violation was "premature and overreaching." There is an "emerging body of additional science" not considered, including the paired watershed studies. Be careful about "unintended consequences of changing a rule to meet an irrational standard that is not accepted by the regulated community." (Note: Agree this is a big PR problem . . But isn't it the lobbyists who are convincing the regulated community not to accept it???)

WHAT'S NEXT? Due to all the hoo-ha over the preliminary rule analysis showing we need a lot more retention in the first 100 feet, ODF is going to take more time to bulletproof their science analysis so there will be an informational only presentation in April. They will also likely be negotiating an understanding with DEQ as to the streams to which the new rule making should apply, but I don't think this decision will be made until June at the earliest. I am not sure yet how to get in on this conversation and/or how to be helpful.

POSSIBLE FOLLOW UP ITEMS FOR CONSERVATION AND FISHING ADVOCATES (Mary and anyone else who wants to help me!):

1. Respond with non-industry scientists to the industry claims that there is "new science" that justifies reopening DEQ's PCW and the underlying policy ion OAR 340-041-0028 to minimize risk to cold water species from anthropogenic activities (Jim James is sending me the Cramer and Skaugset information -- the "science" he and others seem to be relying on).
2. Consider responding with non industry scientists to industry claims about what the various paired watershed studies are showing (and don't show).

3. Provide Gov's office with information about other states' "PCW" standards to show ours is in line and responses to 1 and 2 above.

PS I am also attaching the final version of the "17 groups" letter that is going in the record. It is identical to the one I sent last night EXCEPT that: 1) PCFFAs name was corrected in the header; and McKenzie Flyfishers was added in place of a duplicate appearance for Cascadia Wildlands 2) a job title was added in the signature page for Glen Spain; 3) Bruce Anderson appears on the signature page for McKenzie Flyfishers to reflect a decision of their Board that took place just this morning; 4) a mysterious formatting thing that caused a footnote to appear twice has been fixed.